

VIA FACSIMILE TRANSMISSION AND U.S. MAIL

September 18, 2002

Julie Moujin
Assistant County Attorney
Office of the Mower County Attorney
201 First Street Northeast
Austin, MN 55912

Morgan Smith
Attorney at Law
Law Office of Kenneth M. Bottema
50 Whitney Square
210 North Second Street
Minneapolis, MN 55401

RE: In the Matter of the Revocation of the License of Elaine and Michael Wagner to Provide Family Child Care; OAH Docket No. 11-1800-15053-2

Dear Ms. Moujin and Mr. Smith:

It is my understanding, based upon communications with Mr. Smith, that the parties have agreed that the hearing scheduled for tomorrow in Austin should be continued and a prehearing conference should be held in its place in order to discuss several prehearing matters that have arisen. Accordingly, the hearing is hereby continued. I will initiate a telephone conference call at **10:00 a.m. tomorrow (September 19, 2002)** to discuss the issues involved in this case, the witnesses who will be called by each party, and any other pertinent prehearing issues. We will also set a new hearing date at that time.

On September 16, 2002, I realized that I had not received a copy of the Notice of and Order for Hearing served in this case and asked the OAH Docket Clerk to contact Jonathan Olson of the Mower County Attorney's Office. Mr. Olson informed the Docket Clerk that he believed that the Notice of Hearing had been sent to the OAH in early September, and faxed an additional copy. In reviewing the Notice of and Order for Hearing, I noted that Exhibit A, which typically specifies the issues that will be considered at the hearing and was referenced in the Notice of Hearing, was not attached to the copy I received. The Notice of Hearing thus does not contain any formal statement of the issues involved in this matter.

Minn. Stat. § 14.58 specifies that, in any contested case, "all parties shall be afforded an opportunity for hearing after reasonable notice." The statute goes on to specify that the Notice of Hearing "shall state the time, place, and issues involved, but if, by reason of the nature of the case, the issues can not be fully stated in advance of the hearing, . . . they shall be fully stated as soon as practicable. . . ." Moreover, Minn. Rules 1400.5600, subpart 1(D), requires that the Notice of Hearing include a "statement of the allegations or issues to be determined together with a citation to the relevant statutes or rules alleged violated or which control the outcome of the case."

Letter to J. Moujin and M. Smith
September 18, 2002
Page Two

I have asked Mr. Smith to provide me with copies of the relevant letters from the County and/or DHS stating the reasons for the proposed license revocation. Mr. Smith also indicated in his letter dated September 18 that a separate civil action is pending involving this matter. Given this, the Wagners already may be well aware of the reasons for the Department's revocation of their license. The current draft of the Notice of Hearing is not, however, sufficient to provide them with formal notice of the issues and allegations to be addressed during the hearing or the specific statutory or rule provisions upon which the denial was based. The entry of an appropriate Protective Order would permit the County to disclose not-public data that may be involved in this case. Perhaps such an order has already been entered in connection with the pending civil action. If not, the parties may wish to stipulate to the entry of such an order. We can discuss this during the conference call tomorrow morning and determine whether the County must provide the Wagners with a more complete explanation of the allegations and issues and identification of the specific statutes and rules involved in this matter in order to facilitate their preparation for the hearing.

Sincerely,

/s/ Barbara L. Neilson

BARBARA L. NEILSON
Administrative Law Judge
Telephone: 612/341-7604

cc: Jonathan Olson
Chief Deputy County Attorney